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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 9

No. 529 12

GEO. B. WILLIAMS, WILLIAM J. FINN, M. L. MYERS, ET AL., APPELLANTS,

vs.

RAY L. RILEY, AS STATE CONTROLLER OF THE STATE OF CALIFORNIA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FROM THE NORTHERN DISTRICT OF CALIFORNIA

FILED NOVEMBER 5, 1928

(33,838)

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IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

No. 2161 K. In Equity

GEO. B. WILLIAMS, WILLIAM J. FINN, M. L. MYERS, C. J. Ross, J. J. Croundley, O. H. Beil, S. L. Beer, Wm. J. Aspe, J. Webster, J. Van Aken, R. Torly, J. E. Cox, J. F. Kimball, A. G. Meitner, I. O. Boldt, Paul J. Freson, Wm. Henry, Joseph Kramer, M. J. Brady, M. Larrov, C. J. Lucan, J. Powell, W. A. Anderson, Z. D. Tallman, W. T. Mugg, J. Anderson, Mario Caldera, P. Barale, Wm. Kessler, W. Buntain, N. Schiller, H. Korbus, E. Korbus, F. Sorsin, C. A. Fuller, H. J. Wilken, F. P. Brutler, E. Boyd, Geo. V. Malloy, Rolf K. Evans, S. W. Spencer, W. E. Woodall, R. E. Paton, Chas. Vair, V. J. Consigben, R. G. Snow, Geo. E. Dixon, L. E. Walf, M. Geo. Sacco, Al. Brian, Frank D. Marty, H. Hession, B. J. O'Sullivan, E. J. Cassidy, Toney MacGinley, Wm. M. McGlinsky, E. G. McNaughton, E. W. Hill, and Wm. Leggott, Plaintiffs,

vs.

RAY L. RILEY, as State Controller of State of California, Defendant

BILL OF COMPLAINT—Filed Aug. 4, 1928

[fol. 2] To the Honorable Judges of the District Court of the United States for the Northern District of California, sitting in equity:

Geo. B. Williams, William J. Finn, M. L. Myers, C. J. Ross, J. J. Croundley, O. H. Bell, S. L. Beer, Wm. S. Aspe, J. Webster, J. Van Aken, R. Torley, J. E. Cox, J. F. Kimball, A. G. Meitner, I. O. Boldt, Paul J. Freson, Wm. Henry, Joseph Kramer, M. J. Brady, M. Larrov, C. J. Lucan, J. Powell, W. A. Anderson, Z. D. Tallman, W. T. Mugg, J. Anderson, Mario Caldera, P. Barale, Wm. Kessler, W. Buntain, N. Schiller, H. Korbus, E. Korbus, F. Sorsin, C. A. Fuller, H. J. Wilken, F. P. Brutler, E. Boyd, Geo. W. Mal-

loy Rolf K. Evans, S. W. Spencer, W. E. Woodall, R. E. Paton, Chas. Vair, V. J. Consigben, R. G. Snow, Geo. E. Dixon, L. E. Wolf,, M. Geo. Sacco, Al. Brian, Frank D. Marty, H. Hession, B. J. O'Sullivan, E. J. Cassidy, Toney MacGinley, Wm. M. McGlinsky, E. G. McNaughton, E. W. Hill and Wm. Leggott bring this Bill of Complaint, on behalf of themselves, as well as on behalf of all other persons, firms, associations and corporations similarly interested or situated and entitled to receive the benefits herein, against Ray L. Riley, State Controller of the State of California, Defendant; and thereupon Plaintiffs complain of the said Ray L. Riley, State Controller of the State of California, Defendant, and show unto your Honors as follows:

[fol. 3] I

That the said defendant Ray L. Riley has been for many years last past and is now the duly elected, qualified and acting State Controller of the State of California, residing at Sacramento.

II

That Congress on July 11, 1916, duly enacted an Act entitled:

"An Act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes." Chap. 241, 39 Stat. at L. 355.

In order to receive the said Federal aid provided for in said Act, the State of California enacted a law which provided that said State assented to and agreed to abide by all of the provisions of said Federal Act. Such law was entitled:

"An act expressing assent of the State of California to the provisions of the act of Congress approved July 11, 1916, entitled 'An act to provide*d* that the United States shall aid the states in the construction of rural post roads, and for other purposes.'"

Such State Law was enacted in the year 1917, being Chap. 29. Such law is referred to and made a part hereof the same as if set out in full.

That Congress amended and supplemented the said Act of July 11, 1916 by an Act entitled:

"An Act to amend the act entitled 'An Act to providee that the United States shall aid the states in the construction of rural post roads, and for other purposes,' approved July 11, 1916, as amended and supplemented and for other purposes."

Such act was passed on November 9, 1921, being Chap. 119, 42 Stat. at L. 212.

Both of said Federal Acts are now in full force and effect. That said Federal Acts provide, as follows:

"That all highways constructed or reconstructed under the provisions of this Act shall be free from tolls of all kinds."

Further, the following terms were set out in said Acts, to-wit:

"The term 'Construction' means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway, excepting locating, surveying, mapping, and costs of rights of way."

[fol. 4] Again:

"The term 'reconstruction means a widening or a rebuilding of the highway or any portion thereof to make it a contunuous road, and of sufficient width and strength to care adequately for traffic needs."

All of the moneys appropriated to the States was for construction and reconstruction, but not for maintenance and repair of said highways. The State of California agreed to, at its own cost, maintain and repair said highways, and failing so to do, after notice, the Secretary of Agriculture shall proceed to have such highways placed in a proper condition of maintenance and charge the cost against the Federal fund allotted to said State.

That under said Federal Acts the Government has appropriated and paid over to the State of California many millions of dollars and the State has received the same. The government has and is now appropriating moneys to

the said State, and said State will receive the same, all under the said provisions of said Federal Acts adopted by said State as aforesaid.

All of the highways of the State of California are post roads, and the public highways of said State are covered by the said provisions of said Acts, as aforesaid.

III

The State of California duly adopted a Constitution and the following provisions are found:

Art. IV, Sec. 22:

"No money shall be drawn from the treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the state treasury for the purpose or benefit of any corporation etc."

Art. IV, Sec. 24:

"Every act shall embrace but one subject, which shall be expressed in its title. • • • No law shall be revised or amended by reference to its title, but in such case the act revised or section amended shall be reenacted and published at length as revised or amended;"

Art. IV, Sec. 25:

"The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

• • • • • • •

[fol. 5] Tenth. For the assessment or collection of taxes. • • •

Fifteenth. Refunding money paid into the State Treasury.

• • • • • • •

Nineteenth. Granting to any corporation, association, or individual any special or exclusive right, privilege or immunity.

Twentieth. Exempt property from taxation."

Art. IV, Sec. 31:

The legislature shall have no power to give or to lend, or to authorize the giving or lending, of credit of the state

* * *, in aid of or to any person, association, or corporation, * * *, nor shall it have power to make any gift of any public money or thing of value to any individual, etc., whatsoever. * * *."

The above provisions of said Constitution were adopted prior to the year 1917 and are now in full force and effect. Said provisions are referred to and made a part hereof the same as if set out in full.

IV

That in the year 1923 the State of California duly enacted a law entitled:

"An act to regulate and license the business of producing, refining or distributing gasoline, distillate and other motor vehicle fuels, providing for the collection and disposition of license taxes, prescribing penalties for violation of the provisions of said act, and repealing all acts and parts of acts inconsistent herewith." Chap. 267, Laws 1923.

The above law was amended on May 23, 1925, by amending Sections 4, 7, 10, 11 and 14 and an additional section 18. Chap. 359, Laws 1925.

In the year 1927, sections 10, 11 and 12 of the above law were amended. Chap. 716, Laws 1927.

The State in 1927 enacted the following law:

"An act to provide for the acquisition of rights of way for and the construction, maintenance and improvement of state highways, classifying the highways in the state system and allocating and directing the expenditures of funds for construction, maintenance and improvement of the state highways. Chap. 794, Laws 1927.

In the year 1927 the State duly enacted the following law, entitled:

[fol. 6] "An act to regulate and license the business of producing, refining or distributing gasoline, distillate and other motor vehicle fuels, providing for the collection and disposition of license taxes, and adopting those provisions,

not inconsistent herewith, of an act entitled, "An act to regulate and license the business of producing, refining and distributing gasoline, distillate and other motor vehicle fuels, providing for the collection and disposition of license taxes, prescribing penalties for violation of the provisions of said act, and repealing all acts and parts of acts inconsistent herewith," approved May 30, 1923, as amended and approved May 23, 1925." Chap. 795, Laws of 1927.

Such above laws are referred to herein and made a part hereof as if the same are set out in full.

The District Court of Appeals, Third District, California, interpreted the provisions of the said law of 1923, Chap. 267, which interpretation was sustained by the Supreme Court of the State.

Said decision is found in 242 Pac. 749, under the title of Old Homestead Bakery, Inc., v. Marsh. Such decision is referred to herein and made a part hereof as if the same is set out in full.

The plaintiffs allege that the said amendments to said original laws do not change or modify the said interpretation of said law, as aforesaid.

The plaintiffs allege that the above State Laws are construed with the Motor Vehicle Law so as to raise revenue in the nature of compensation for the damage done to the highways by said motor propelled vehicles; and that by reason of the provisions for refunds the plaintiffs, as well as all other firms, persons, associations and corporations similarly interested or situated, pay in advance said exactions under the above named laws solely for the purpose of using their motor propelled vehicles on the public highways of the State, namely, a "toll" for such use; that the said distributors do not pay one cent to the State Controller such exactions, but said distributors collect all the moneys from all the consumers of said motor vehicle fuels; that said distributors keep one per cent of all moneys so collected and do not pay over to said State Controller the entire amount so collected and said one per cent is a gift [fol. 7] to said distributors; that said distributors receive the benefit of the use of the moneys which they have collected during the said periods plus an additional 45 days, and said distributors have received such benefits from the

use of said moneys so collected from all the consumers; that the defendant has and wi" in the future pay over to the said distributors and consumers exempted by said above laws, as refunds, many hundreds of thousands of dollars at a loss of one per cent as aforesaid, as the defendant had only collected Ninety-nine (99) percentum of the amounts paid as refunds, and said procedure has benefited not only the said distributors but also said exempted consumers in the said amount of one percentum, at the loss of said State; that the amounts so collected as aforesaid, are divided between the State and the Counties in the State, and no portion of said moneys are paid over to the municipalities of the State who must raise revenue for the purpose of constructing or reconstructing, or maintaining and repair the streets in such municipalities by assessments and taxes; that all of said moneys so collected is used for the purpose of constructing or reconstructing said highways of the State, and also to maintain and repair the same.

V

That the plaintiffs, as well as many thousands of persons, firms, associations and corporations, are taxpayers in this State and have for some years and are now operating motor propelled vehicles on the public highways of this State and must pay in advance said motor vehicle fuel exaction before operating on said Federal aided highways, and said exactions are not a part of the price of said fuel but are in addition to the purchase price.

The plaintiffs, as well as said other persons, firms, associations and corporations, have been and will in the future pay said exactions under said State laws, for the sole purpose of using the said public highways of the State by their said motor vehicles and such exaction is a "toll' and the cost per mile of said use depends upon the size and weight
5 [fol. 8] of said vehicles; that said plaintiffs, as well as all other persons, firms, associations and corporations, are compelled to and have and will in the future pay taxes and assessments for the construction or reconstruction, the maintenance and repair of the streets of the municipalities of the State, that said plaintiffs have been informed, believe and charge the fact to be that about forty (40) per centum of all of the moneys received by the said defendant under

the provisions of said State laws are an exaction as compensation for the use of public highways outside of the municipalities of the State, and the remainder thereof is an exaction for the use of the streets within the municipalities of the State, and all the moneys so exacted and received by the defendant are expended solely upon the public highways of the State outside of the limits of the municipalities, and the said municipalities and these plaintiffs and all other persons, firms, associations and corporation, as taxpayers, receive no benefits whatsoever from such exactions and payments.

VI

That said defendant, solely under color of his said office as State Controller, has for years and will continue to demand and collect said illegal exaction under the provisions of said State laws from those plaintiffs and all other persons, firms, associations similarly interested or situated; that said defendant will in the future collect under such State laws many thousands of dollars daily; that said defendant has received and has in his hands the tax roll, as provided for by said laws, during the said period from March 31, 1928 to July 1, 1928, and has demanded from said distributors the amount of money shown by said tax roll, to-wit, about $8,477,293.00; and further, the said defendant has paid out during the same period about $800,000.00, as refunds under said State laws.

That said defendant, after having received said moneys, will immediately distribute said moneys, as provided for [fol. 9] in said State laws, and no portion of said moneys will be distributed or apportioned to the said municipalities of said State.

That the said illegal acts of said defendant, acting under said unconstitutional laws of the State, have and will continue to obstruct, tend to obstruct, hinder, impair and impede the unrestricted and vested passage, use and operation of said motor vehicles owners or operated by said plaintiffs and all other persons, firms, associations or corporations similarly interested or situated, on the said Federal aided highways, as aforesaid, and the streets within the limits of the said municipalities of the State, to the irreparable loss, damage and injury to said plaintiffs and all

other persons, firms, associations and corporations similarly interested or situated, unless restrained by the order of this Court.

VII

That the provisions of said unconstitutional laws of the State, as aforesaid, being Chapter 267 Laws of 1923, Chapter 359 Laws of 1925, Chapters 716, 795, Laws of 1927, and the said illegal acts of said defendant, Ray L. Riley, in enforcing the provisions of said illegal State Laws, as aforesaid, were and are void and unconstitutional, being contrary to and in violation of the Constitution of the United States, especially the 14th Amendment thereof, and further, being contrary to and in violation of the said Federal Aid Legislation, being Chapter 241, 39 Stat. at L. 355, and Chapter 119, 42 Stat. at L. 212 and said contract entered into by the said State of California, being Chapter 29 Laws of 1917, and further, contrary to and in violation of the Constitution of the State of California, the protection of all of which these plaintiffs and all other persons, firms, associations and corporations similarly interested and situated pray.

VIII

The premises considered these plaintiffs and all other persons, firms, associations and corporations, similarly in-
[fol. 10] terested and situated have no plain, adequate and complete remedy at law.

IX

That the matters involved in this controversy exceed in value the sum of Three thousans (3,000) dollars, exclusive of interest and costs.

X

For as much as these plaintiffs and all other persons, firms, associations and corporations similarly interested and situated, can have no adequate relief except in this court and to the end that the defendant may, if he can, show why the plaintiffs and all other persons, firms, associations and corporations similarly interested or situated

should have the relief herein prayed, and make full disclosure and discovery of all the matters aforesaid, according to the best and utmost of his knowledge, information and belief, full, true, direct and perfect answer make to the matters in this bill of complaint hereinbefore stated, but not under oath, an answer under oath being especially waived, and the plaintiffs, on behalf of themselves as well as on behalf of all other persons, firms, associations and corporations similarly interested or situated, who are entitled to the benefits herein, pray that a temporary injunction be granted restraining and enjoining the defendant Ray L. Riley, as State Controller, as aforesaid, from in any way or manner disbursing, using, apportioning or expending any of the moneys which have been or will be received by him as collections from March 31, 1928, from said distributors under the provisions of said State laws, and said defendant is directed and commended to safeguard and keep all moneys received from said collections after March 31, 1928, in a separate fund intact, so as to turn over all of said moneys so collected as aforesaid, awaiting for a final decree in the above cause, and the plaintiffs pray that this Court proceed to call in two other Judges of this court, one of whom to be a Circuit Judge, for the purpose of hear-[fol. 11] ing and determining the application for the said temporary injunction as prayed for herein, under the provisions of Section 266, as amended, of the Judicial Code, and the plaintiffs pray upon the final hearing of this cause before said Court consisting of Three Judges for a decree declaring the said State laws, being Chapter 267 Laws of 1923, Chapter 359 Laws of 1925, and Chapters 716 and 795 Laws of 1927, are void and unconstitutional, and that the said Ray L. Riley, Defendant, be forever enjoined and permanently restrained from enforcing the said provisions of said illegal, void and unconstitutional State laws, and the plaintiffs further pray that a decree be entered commanding and directing the said Ray L. Riley, defendant, to immediately pay over to the registry of this Court all of the said moneys which have been received by said defendant under the provisions of said illegal, void and unconstitutional State laws since March 31, 1928, and the plaintiffs pray for such allowances, distributions and payments as the Court may hereafter determine, award and decree; and for all other, proper and further relief as may be just and

equitable in the premises, and further for the costs and disbursements herein expended.

W. R. Crawford, Solicitor for Plaintiffs.
Address: 325 Lumber Ex. Bldg., Seattle, Wash.

Duly sworn to by Geo. B. Williams. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR AN INTERLOCUTORY INJUNCTION

Come now the plaintiffs in the above entitled cause and move this Court for the issuing of an interlucutory injunction, until the final determination of said cause; and the plaintiffs request this Court will call in two other Judges, one of whom shall be a Circuit Judge, under the provisions of Section 266, as amended, of the Judicial Code, so as to hear and determine said motion for said interlocutory injunction, as the constitutionality of the statutes of the State of California and the acts of the said Ray L. Riley, defendant, as State Controller of the State of California, in enforcing said State statutes are involved in this action, and further, that said Court, consisting of three Judges, shall finally hear and determine such action.

Said motion is based upon the records and files in this cause and the said affidavit attached to this motion.

W. R. Crawford, Solicitor for Plaintiffs.

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF WILLIAM J. FINN—Filed Aug. 4, 1928

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William J. Finn, first being duly sworn upon oath, deposes and says: That he is one of the Plaintiffs in the above entitled cause; that he has for many years and is now the

owner and operator of motor-propelled vehicles, using the public highways of the State of California, including the streets, avenues and roads within the limits of municipalities; that he is now and has been the owner of real estate in the City of Los Angeles, State of California, and has paid taxes on such real estate and also on personal property in said city; that he has been informed, believes, and charges the fact to be that said taxes paid by him in said city into the general fund, and the streets, avenues and roads within said city are maintained and repaired out of said general fund, and that the said exactions under the said motor vehicle laws do not furnish any funds to maintain and repair the streets, avenues and roads, not only in said Los Angeles, but also in all other municipalities in the State, as the moneys received from said State laws never reach any of said municipalities, but said moneys are divided between the State and the Counties; that this affiant has been informed, believes and charges the fact to be that the said Defendant has paid out money for refunds after the period in which he had received said collections under [fol. 14] said laws, and the consumer had paid to the said distributors prior to the said period mentioned above; that said Defendant will disburse and turn over to the fund created by the law, and said Defendant will lose control and possession of all of the moneys which he is now collecting from said distributors, since the 31st day of March, 1928, unless enjoined by this Court; that this affiant, as well as the other Plaintiffs and all other persons, firms, associations, and corporations similarly interested and situated, will not be able to recover back any of said moneys if the said Defendant is permitted to lose the control and possession of said moneys so collected under said State laws, and they will be irreparably damaged and their moneys lost.

William J. Finn.

Subscribed and sworn to before me this 3rd day of August, 1928. Nina C. Putnam, Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 1, 1931. (Seal.)

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed Aug. 4, 1928

It appearing to the Court from the motion for an interlocutory injunction and the affidavit attached thereto; and from the bill of complaint filed herein that the constitutionalty of the statutes of the State of California and the acts of the defendant Ray L. Riley, as State Controller of the State of California, in enforcing the provisions of said statutes are involved in this action; also the plaintiffs have prayed for an interlocutory injunction restraining the enforcement of the said statutes and the acts of the said defendants during the pendency of this action and until the final hearing and determination thereof; and it further appearing that the plaintiffs have moved the Court for said interlocutory injunction based upon the records and files in this cause and the affidavits attached to said motion; the Court being fully advised in the premises, it is

Considered, ordered, adjudged, and decreed that the said Ray L. Riley, defendant, as State Controller of the State of California, show cause, if any he has, before a Session of this Court, consisting of three Judges thereof, one being a Circuit Judge, at Ten (10:00) o'clock A. M. on the 13 day of August, 1928, at the Court Room of this Court in the Federal Building in the City of San Francisco, California, why an interlocutory injunction should not issue as prayed for in the complaint and moved for by the plaintiffs; and [fols. 16-18] further, the said plaintiffs shall forthwith serve copies of the bill of complaint, the motion for an interlocutory injunction with the affidavit attached thereto and the order entered herein upon the said Ray L. Riley, defendant, as State Controller of the State of California, and serve a notice accompanied by copies of the bill of complaint, the motion for an interlocutory injunction with the affidavit attached thereto and the order entered herein upon the said Governor of the State of California and the said Attorney General of the State of California.

Enter:

Wm. H. Hunt, Judge.

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

ORDER SETTING CAUSE FOR HEARING—Filed Sept. 8, 1928

It appearing that the parties herein did enter into and file a certain stipulation, and an order was entered continuing the hearing on the order to show cause why an interlocutory injunction should not be granted against the Defendant, and by said order continuing said hearing it was provided that the Court will thereafter fix the time and place for a hearing on said order to show cause, and that the Defendant has now served a Motion to Dismiss the Bill of Complaint filed herein, and the Court being fully advised in the premises it is

Ordered that the Court, consisting of three judges, one being a Circuit Judge, will hear, on September 27th, 1928, at the hour of 2 P. M. o'clock, in the Federal Building in San Francisco, the said Order to Show Cause why an interlocutory injunction should not be granted against the Defendant, and further the Motion to Dismiss the Bill of Complaint filed herein.

Dated September 8th, 1928.

Frank H. Kerrigan, Judge.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT

Now comes Ray L. Riley, as State Controller of the State of California, named as defendant in the above entitled proceeding and moves the above entitled court to dismiss the bill of complaint filed herein on the following grounds:

I

That said bill of complaint does not state facts sufficient to constitute a cause of action against said defendant, or to entitle complainants, or any of them, to the whole or any part of the relief prayed for in said bill.

II

That this court has no jurisdiction of the subject of this proceeding, or of the above named defendant, or of the State of California.

III

That there is a defect of parties plaintiff in that the several plaintiffs are not properly joined.

[fol. 21]

IV

That there is a misjoinder of parties plaintiff in that the plaintiffs are not properly joined.

V

That several alleged causes of action have been improperly united.

VI

That complainants have not, and no one of them has, legal capacity to sue defendant.

This motion is also based upon the said bill of complaint, the notice of motion and upon all of the papers and records on file in the above entitled proceeding.

Dated September 20, 1928.

U. S. Webb, Attorney General of California; Frank L. Guerena, Deputy Attorney General, Attorneys for Defendant, Ray L. Riley, as State Controller of the State of California.

[fol. 22] In United States District Court

[Title omitted]

Affidavit of Service by Mail—Filed Sept. 26, 1928

State of California,
City and County of San Francisco, ss:

Virginia Rae, being duly sworn, deposes and says: That she is a citizen of the United States, over the age of eighteen

years, and is not a party to this action, and that she resides at the City and County of San Francisco, State of California; that W. R. Crawford, is the attorney of record of the above-named plaintiff in said cause, and that he resides at 625 North Elm Drive, Beverly Hills, in the County of Los Angeles, State of California; and that in each of said two places there is a United States Post Office, and between said two places there is a regular daily communication by mail; that on the 22nd day of September, 1928, deponent served a true copy of Motion to Dismiss Bill of Complaint and Notice of Hearing Thereon herein, of which this is the original, on said last-named W. R. Crawford, attorney of record, by depositing such copy aforesaid on said date in the post office at the City and County of San Francisco, aforesaid, enclosed in a sealed envelope, addressed to said W. R. Crawford, at 625 North Elm Drive place of Beverly Hills, Calif., and prepaying the postage thereon. And deponent further sayeth not.

Virginia Rae.

Subscribed and sworn to before me this 22nd day of September, 1928. Marguerite Gallagher, Steno. to Attorney General.

[File endorsement omitted.]

[fol. 23] IN UNITED STATES DISTRICT COURT

Equity. No. 2161

GEORGE B. WILLIAMS et al.

vs.

RAY L. RILEY, etc.

ORDER DENYING INTERLOCUTORY INJUNCTION AND DISMISSING BILL OF COMPLAINT—Sept. 28, 1928

In this case the application for an interlocutory injunction and the motion to dismiss the Bill of Complaint, heretofore argued and submitted, being now fully considered, it is ordered that said Application for an injunction be and the same is hereby denied, and that the motion to dismiss, be and the same is hereby granted.

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Oct. 15, 1928

The above named Plaintiffs, conceiving themselves aggrieved by the order and decree made and entered on the 28th day of September, 1928, in the above entitled action, do hereby appeal from the said order and decree to the Supreme Court of the United States for the reasons specified in the Assignment of Error, which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers, upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 15th day of October, 1928.

W. R. Crawford, Solicitor for Plaintiffs.

The foregoing Appeal is allowed upon the filing of a proper bond in the amount of $250.00 dollars.

Frank H. Kerrigan, District Judge. Wm. H. Hunt, Circuit Judge. A. F. St. Sure, D. J.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERROR—Filed Oct. 15, 1928

And now, on this 15th day of October, 1928, came the plaintiffs by their solicitor W. R. Crawford, and say that the order entered in the above cause of the 28th day of September, 1928, denying the application for an interlucutory injunction against the defendant herein, is erroneous and unjust to plaintiffs:

Because the Court erred in refusing and denying the application for on interlocutory injunction against Ray L. Riley, as State Controller, the defendant herein.

And further, and now, on this 15th day of October, 1928, came the plaintiffs by their solicitor W. R. Crawford, and say that the order and decree entered in the above cause

on the 28th day of September, 1928, granting the motion to dismiss the bill of complaint in said cause and dismissing the said bill of complaint, is erroneous and unjust to the plaintiffs:

First. Because the Court erred in granting the said motion to dismiss the said bill of complaint, and,

Second. Because the Court erred in dismissing the bill of complaint.

Wherefore the plaintiffs pray that the said order refusing the application for said interlocutory injunction be reversed; and further that the said order and decree en-
[fols. 26-32] tered in said cause granting the motion to dismiss and dismissing the bill of complaint be reversed; and further that the District Court be instructed and directed to enter a decree as prayed for in said bill of complaint; and for such proper relief as the plaintiffs are entitled to and as the nature of the cause demands.

W. R. Crawford, Solicitor for Plaintiffs.

[File endorsement omitted.]

[fol. 33] Citation, in usual form, showing service on U. S. Webb et al., omitted in printing.

[fol. 34] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Nov. 13, 1928

The Appellants request the Clerk to file the points relied upon and to print the following parts of the record.

Points Relied Upon

I

Congress enacted the Post Road Act on July, 1916 under the provisions of Article I, sec. 8 of the Constitution, and the same was amended and supplemented on November 9, 1921. The State of California by proper statute agreed to and to abide with all the provisions of said Federal Aid Legislation. Such action of said State became a contract, and the appellants (plaintiffs) and all others similarly in-

terested or situated are entitled to enjoy all of the benefits accruing under said provisions of said Federal Aid Legislation.

II

All highways in the State are post roads, and said highways have been or are now being constructed or reconstructed under the said federal aid, as provided by said [fol. 35] Federal Aid Legislation, so adopted by said State. The Federal Government has already paid over to said State, who has received the same, many millions of dollars, and is obligated in the future to pay many millions of dollars to said State.

III

The said State enacted the following laws, to wit; Chapter 267, Laws of 1923, amended by Chapter 359, Laws of 1925, and amended by Chapter 716, Laws of 1927, and amended by Chapter 795, Laws of 1927. Under the provisions of said State Laws, the State has compelled the said Appellants and all others to pay in advance 3 cents per gallon of the motor vehicle fuel before the said highways cane be used by motor propelled vehicles. That such charge is a "toll." Such State Laws are contrary to and in violation of the provisions of said Federal Aid Legislation granting these Appellants and all others similarly interested or situated the use of said highways without the exaction of a "toll," the protection of said Federal Aid Legislation was prayed for.

IV

The Appellants and all others similarly interested or situated claim that said State Laws giving to some one per cent of all moneys collected and denying others the same privilege, are invalid and void, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution, and also the Constitution of the State of California.

V

The Appellants, who are tax payers, and all others similarly interested or situated claim that said State Laws in taking the moneys and properties of the Appellants and all others similarly interested or situated under the guise

of taxes for private purposes, violates the due process of law clauses in the Federal Constitution, especially the Fourteenth Amendment thereof, and also the provisions of the Constitution of California.

[fol. 36] VI

The Appellants, as tax payers, as well as users of said highways, and all others similarly interested or situated claim that the provisions of said State Laws, requiring the State Controller to pay to any person who uses motor vehicle fuel for any purpose other than operating motor propelled vehicles on the highways, and on which the exaction imposed by the said State Laws has been paid in advance, 3 cents on each gallon of said motor vehicle fuel so used, regardless of whether such person has paid the exaction himself or indirectly, are contrary to and in violation of the Constitution of the State of California, as such refunds are gifts from the public treasury to such users receiving such refunds.

VII

The Appellants, who are tax payers and users of said highways and all others similarly interested or situated claim that the provisions of said State Laws, requiring the State Controller to pay to any person who uses motor vehicle fuel for any purposes other than for the use of the highways by motor propelled vehicles as well as any person exempted by said Laws, and which the exaction imposed by the said State Laws, has been paid, 3 cents on each gallon of said motor vehicle fuel so used, regardless of whether such person has paid said exaction himself directly or indirectly, are invalid, as taxing the Appellants, as tax payers, as well as users of the highways, and all other similarly interested or situated to raise funds to provide gifts to such consumers who have received said refunds, thereby depriving them of their moneys and properties without due process of law contrary to and in violation of the Federal Constitution, especially the Fourteenth Amendment thereof, and also the Constitution of the State of California.

IX

The Appellants, tax payers and users of the highways, and all others similarly interested or situated, claim that

the provisions of said State Laws, requiring the State Controller to pay said refunds of 3 cents on each gallon of said [fol. 37] motor vehicle fuel although said State Controller has never collected said 3 cents but only 99 per cent thereof, as the distributors kept the 1 per cent for their own use, are invalid as the Appellants and all others similarly interested or situated are deprived of their properties and moneys without due process of law contrary to and in violation of the Federal Constitution, especially the Fourteenth Amendment thereof, and also the Constitution of California.

X

The Appellants, as tax payers and users of the highways, and all others similarly interested or situated, claim that under the provisions of said State Laws all of the moneys are collected from the use of all the highways, but no portion of said moneys is expended upon the highways within the limits of the municipalities of the State, and therefore said provisions are invalid, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution, and also the Constitution of California.

XI

The Appellants, as tax payers and users of the highways, and all others similarly interested or situated claim that the said provisions of the said State Laws are invalid, and such invalidity of said provisions renders the whole of said State Laws unconstitutional and void, being contrary to and in violation of the Federal Constitution, especially the Fourteenth Amendment thereof, and further the Constitution of the State of California, the protecion of all of which the Appellants and all others similarly interested or situated is prayed.

XII

The Appellants and all other similarly interested or situated claim that the said provisions of said State Laws are invalid as the said provisions are not embraced within the titles of said State Laws, contrary to and in violation of the Constitution of California.

[fol. 38]

XIII

The Appellants claim that this action was instituted under Section 24, especially the 14th paragraph thereof, of

the Judicial Court, and on behalf of themselves but also on behalf of all persons, firms, associations and corporations similarly interested or situated, and entitled to receive to the benefits herein.

XIV

The lower Court erred in denying the application for an interloctuory injunction.

XV

The lower Court erred in granting the motion to dimsiss the bill of complaint.

XVI

The lower court erred in failing and refusing to file a written opinion in denying the application for an interlocutory injunction and granting the motion to dismiss the bill of complaint, although the Appellants requested the same.

XVII

Upon filing said action, the Appellants moved for an interlocutory injunction to restrain the Appellee from enforcing said unconstitutional and void State Laws aforesaid, and immediately the District Court entered an order setting a hearing of said motion before three judges, under the provisions of Secuon 266, as amended, of the Judicial Court. Proper notices were given and served on the Governor, the Attorney General and the Appellee, Ray L. Riley, as State Controller. Said Appellee filed a motion to dismiss the bill of complaint. The District Court, composed of three judges, denied the motion for an interlocutory injunction and granted the motion to dismiss without any opinion.

The Appellants, as tax payers and users of the highways, claim that they were entitled to an interlocutory injunction [fol. 39] prayed for restraining and enjoining said Ap pellee, as State Controller, as said State Laws are unconstitutional and void being contrary to and in violation of the provisions of the Federal Aid Legislation prohibiting "tools" of any kind, and also the Federal Constitution,

especially the Fourteenth Amendment thereof, and also contrary to and in violation of the Constitution of the State of California.

XVIII

The Appellants pray this Honorable Court to reverse the order of the lower Court refusing an interlocutory and granting the motion to dismiss the bill of complaint, and further direct the lower Court to issue a permanent injunction prayed for in the bill of complaint, and direct the lower Court to enter a decree commanding Ray L. Riley, as State Controller, to pay over to the registry of the Court all of the said moneys which have been received by him under the provisions of said illegal, void and unconstitutional State Laws since March 31, 1928, and for allowances, distributions and payments as may be hereafter determined, awarded and decreed to said Plaintiffs (Appellants) and all persons, firms, associations and corporations similarly interested or situated who are entitled to receive the same benefits as the Plaintiffs (Appellants); the Appellants pray for any other and proper relief as this Honorable Court may deem proper and fit in the premises.

W. R. Crawford, Edwin C. Ewing, Solicitors for Appellants.

Designation of Parts of Records to be Printed.

1. Bill of complaint.

2. Motion for interlocutory injunction with affidavit.

3. Order of August 4, 1928, fixing hearing on interlocutory injunction before three judges.

[fol. 40] 4. Notice to and acknowledgment by the Governor, Attorney General and State Controller.

5. The motion to dismiss bill of complaint.

6. Order denying the interlocutory injunction and granting the motion to dismiss bill of complaint.

7. Order allowing appeal.

8. Citation.

9. Assignment of errors.

10. Names of solicitors and addresses.

W. R. Crawford, Edwin C. Ewing, Solicitors for Appellees, 625 North Elm Drive, Beverly Hills, California.

Proof of Service of Notice of the Foregoing

STATE OF CALIFORNIA,
County of Los Angeles, ss:

The undersigned, being first duly sworn, on oath deposes and says that on November 10, 1928, at Beverly Hills, California he deposited in the United States Post Office, in a sealed envelope, prepaid, addressed to U. S. Webb, Attorney General and Frank L. Guerena, Deputy Attorney General, Solicitors for Ray L. Riley, as State Controller, Appellee, State Building, San Francisco, California, two copies of the Points relied upon by Appellants, and the Designation of the Parts of Record to be Printed, being contained in the foregoing.

W. R. Crawford.

Subscribed and sworn to before me this 10th day of November, 1928. George F. Elmendorf, Notary Public in and for the State of California, County of Los Angeles. Seal George F. Elmendorf, Notary Public, Los Angeles Co., Cal.

[fol. 41] [File endorsement omitted.]

Endorsed on cover: File No. 33,838. N. California D. C. U. S. Term No. 529. Geo. B. Williams, William J. Finn, M. L. Myers, et al., appellants, vs. Ray L. Riley, as State Controller of the State of California. Filed November 5th, 1928. File No. 33,838.

IN THE

Supreme Court of the United States

October Term, 1928

No. 529

GEO. B. WILLIAMS, et al.,
Appellants,

vs.

RAY L. RILEY, as State Controller,
Appellee.

STATEMENT AND PETITION TO ADVANCE

Comes now the Appellant in the above entitled cause and petitions that this cause be advanced for early hearing, and in support thereof, makes the following statement of the matter involved, and reasons relied upon for advancement.

(a) The appeal is based upon the provisions of paragraph 3 of Section 238 of the *Judicial Code,* as amended by the Act of February 13, 1925, *C.* 229, 43 *Stat.* 936.

(b) The lower Court, composed of three judges, entered an order on September 28, 1928, denying the motion for an interlocutory injunction, and granting the motion to dismiss the bill (Record, p. 23). The plaintiffs (now appellants) presented their application for this appeal on October 15, 1928 (Record, p. 24).

(c) The bill of complaint shows that: the plaintiffs instituted the action as a class suit (Record, p. 2); the defendant is the State Controller of California (Record, p. 3); Congress enacted the Federal Aid Legislation providing states must assent to the provisions of said Aid Legislation, and the state duly assented to and agreed to abide with all the provisions of said Federal Aid Legislation, including the prohibition against tolls of all kinds (Record, p. 3); the State has received many millions under such Federal Aid Legislation adopted by the State, and in the future will receive additional millions, and all highways in the State are post roads and covered by the said provisions of said Aid Legislation (Record, p. 4); the State duly enacted a Constitution (Record, pp. 4, 5); the State enacted a law in 1923, which was amended in 1925 and 1927 (Record, pp. 5, 6); said State Laws were enacted to raise revenue in the nature of compensation for the use of highways by motor propelled vehicles, and the plaintiffs must pay in advance the exactions under said State Laws while others are entitled to refunds, and such exactions are "tolls" (Record, p. 6); the distributors collect all such exactions from all consumers and keep one per cent thereof (Record, p. 6); the distributors receive the benefits of the moneys collected from 1½ to 4½ months (Record, pp. 6, 7); the defendant has and will in the future pay over to said distributors and others exempted, as refunds, many hundreds of thousands of dollars at a loss of one per cent, as the defendant pays out 100 per cent while he has only collected 99 per cent, and said refunds benefit the said distributors and exempted consumers (Record, p. 7), the moneys collected are divided between the State and Counties while the Munici-

palities receive no portion and said Municipalities must construct and maintain the highways within their limits (Record, p. 7); the plaintiffs are tax-payers using the highways by their motor propelled vehicles and must pay in advance said exactions which are not a part of the price of said fuel, and such exactions are "tolls," and the plaintiffs have and will be compelled to pay taxes and assessments for the construction or reconstruction, repair and maintenance of the highways within the limits of the municipalities, and 40 per cent of the moneys collected is received from the use of the highways outside of said municipalities while the other 60 per cent is an exaction for the use of the streets of municipalities, and said municipalities and the plaintiffs receive no benefits whatsoever from such exactions and payments (Record, pp. 7, 8); the defendant solely under color of his office has and will continue to demand and collect said illegal exactions under the provisions of said State Laws, and will collect many thousands of dollars daily, and will collect millions during the period from March 31, 1928, to July 1, 1928, and has paid out about $800,000 for refunds during the same period; the defendant will immediately expend and distribute said moneys as provided for in said State Laws; said illegal acts of said defendant acting under said unconstitutional State Laws have and will obstruct and impair the unrestricted use of said Federal aided highways, and the streets within the municipalities, to the irreparable loss, damage and injury to the plaintiffs and all others similarly interested or situated (Record, pp. 8, 9); the provisions of said unconstitutional Laws, and the acts of said defendant in enforcing the said unconstitutional Laws, were and are void and uncon-

stitutional, being contrary to and in violation of the Constitution of the United States, especially the 14th Amendment thereof, the Federal Aid Legislation and the contract made by the State, and the Constitution of the State, the protection of all of which the plaintiffs and all other persons, firms, associations and corporations similarly interested and situated pray; no plain, adequate and complete remedy at law; matters involved exceed $3000, exclusive of interest and costs; the plaintiffs, on behalf of themselves and all others similarly interested and situated, pray for an interlocutory injunction restraining the defendant from disbursing, using, apportioning or expending any moneys which have been or will be received by him as collections from March 31, 1928, and is directed to keep all moneys collected from March 31, 1928, in a separate fund intact, so as to await the final decree, and the court call in two judges, one of which is a circuit judge, for the hearing of an application for an interlocutory injunction under Section 266, as amended, of the *Judicial Code,* and upon a final hearing before said court, consisting of three Judges, for a decree declaring said State Laws are void and unconstitutional and the defendant be permanently restrained from enforcing said illegal, void and unconstitutional State Laws, and the defendant pay into the registry of the Court all the moneys collected since March 31, 1928, and for such allowances, distributions and payments as the Court may determine, award and decree, and for all other proper and further relief as may be just and equitable in the premises, and for costs and disbursements (Record, pp. 9, 10, 11).

The plaintiff moved for such interlocutory injunction (Record, pp. 12, 13, 14).

The lower Court entered an order and called in two other judges, one of whom is a Circuit Judge, and set the hearing on said motion (Record, pp. 15, 16). The plaintiffs served proper notices to the Governor, the Attorney General and the defendant (Record, p. 17).

The Court composed of three judges, heard such motion and also a motion to dismiss filed by defendant. Denied the motion and granted the motion to dismiss (Record, p. 23).

The lower Court refused and failed to file a written opinion, although the plaintiffs at the hearing requested the Court to file a written opinion.

(d) The following cases sustained the jurisdiction:

Buck v. Kuykendall, 276 U. S. 205;
Morris, et al., v. Duby, et al., 47 Sup. Rep. 548.

WHEREFORE the appellants pray this Honorable Court to sustain its jurisdiction, and to advance this case.

Respectfully submitted,

W. R. CRAWFORD,
EDWIN C. EWING,
Solicitors of Appellant.